

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Civil Action No. 4:13-cv-10

)
FLYING PIGS, LLC,)
)
)
)
Plaintiff,)
)
)
v.)
)
RRAJ FRANCHISING, LLC,)
)
)
Defendant.)
)
)

NOTICE OF REMOVAL PURSUANT TO 28 USC §§ 1441 AND 1446
(Case No. 12-CvS-1354; Lenoir County, NC)

Defendant RRAJ Franchising, LLC, (“Defendant”), pursuant to 28 U.S.C. §§ 1441 & 1446(a), respectfully shows the Court the following:

1. The above-entitled action was originally commenced by Plaintiff Flying Pigs, LLC (“Plaintiff”) by the filing of a complaint (the “Complaint,” a copy of which is attached as Exhibit A) and the issuance of a summons (the “Summons,” a copy of which is attached as Exhibit B) in the Superior Court Division of the General Court of Justice of Lenoir County, North Carolina, bearing civil action number 12-CvS-1354 (the “State Court Action”) on December 12, 2012.

2. Defendant was served a copy of the Complaint and Summons on December 18, 2012 by mail. Pursuant to N.C. R. Civ. Pro. 6(e) and 12(a)(1), Defendant’s response in the State Court Action was initially due on or before January 21, 2013. On January 10, 2013, Defendant requested, and the State Court granted Defendant, an extension of time to and including February 18, 2013, in which to answer or otherwise respond to Plaintiff’s Complaint. (Copies of the Motion and Order for Extension are attached as Exhibit C.)

3. This Notice of Removal has been filed within the time provided by law for the removal of civil actions to the United States District Courts as set forth in 28 U.S.C. § 1446(b).

4. The gravamen of Plaintiff's Complaint is a dispute over ownership of two trademarks held and registered pursuant to the Federal Lanham Act, 15 U.S.C. § 1051 et seq. Generally, Plaintiff alleges that it has an enforceable right in, and to, the trademarks despite the facts that: (a) the registered marks were purchased by, and assigned to, Defendant, and (b) Plaintiff is not the registered owner, has never owned or been assigned, and has never used, or supervised the use, of such trademarks.

5. United States district courts have original jurisdiction over any civil action arising under the laws of the United States relating to patents, copyrights and trademarks. 28 U.S.C. § 1338(a). Accordingly, removal of the action to this Court is proper pursuant to 28 U.S.C. § 1441(a).

6. Exhibits A-C are copies of all of the process and/or pleadings served on Defendant to date.

7. A copy of this Notice is being provided to each party and a copy hereof shall be filed with the Clerk of Court for Lenoir County, all in accordance with the provisions of 28 U.S.C. § 1446(d).

WHEREFORE, Defendant RRAJ Franchising, LLC, prays that the above-captioned action be removed from the General Court of Justice, Superior Court Division of Lenoir County, North Carolina, to the United States District Court for the Eastern District of North Carolina.

This the 17th day of January, 2013.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on 17 January 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I emailed the document to the following non CM/ECF participants pursuant to such counsels' prior written consent to electronic service of documents:

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This the 17th day of January, 2013.

Respectfully submitted,
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